

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

UNITED STATES OF AMERICA,
Plaintiff
v.
THIRD COAST TOWING, LLC, ET AL.

Case No. 3:16-cv-34-CWR-FKB

**DECLARATION OF ELISE FELDMAN IN SUPPORT OF UNITED STATES' MOTION
TO COMPEL THE PRODUCTION OF DOCUMENTS AND RESPONSES TO
INTERROGATORIES BY DEFENDANT NATURE'S WAY MARINE, LLC**

I am a Senior Attorney with the Environmental Enforcement Section, Environment and Natural Resources Division, United States Department of Justice. I am one of the attorneys representing Plaintiff United States of America ("United States") in the above-captioned action. Accordingly, I am familiar with the facts and circumstances set forth herein.

1. I hereby certify that the United States has in good faith attempted to confer with counsel for Nature's Way Marine LLC ("Nature's Way") in an effort to obtain timely discovery without court action, as explained below.
2. On February 22, 2018, during a meet and confer between counsel for all parties, the United States proposed that the parties attempt to reach stipulations to resolve most issues for trial, and alleviate the need for most discovery in this matter. Counsel for Nature's Way indicated he was amenable to stipulations on most issues and would discuss with his client.

3. On February 26, 2018, the United States sent proposed stipulations as had been discussed during the February 22, 2018 meet and confer. See Exhibit A. The United States requested a response that week, so that any issues could be resolved without discovery requests being sent. *Id.* Counsel for Nature's Way did not respond to proposed stipulations.
4. On March 5, 2018, the United States once again asked for a response on the draft stipulations. See Exhibit B. No response was received from Nature's Way.
5. On March 21, 2018, the United States served its Requests for Production and First Set of Interrogatories. See Exhibit C.
6. On April 20, 2018, one business day prior to the deadline for discovery responses, Ms. Castex, a paralegal working with Nature's Way's counsel, reached out to me, as counsel for the United States, to request an extension for responses until May 7, 2018. See Exhibit D. Nature's Way had not previously contacted the United States regarding either the stipulations or the discovery requests.
7. I responded, on April 20, 2018, by pointing out that on February 26, 2018, the United States sent proposed stipulations that would alleviate the need for virtually all discovery. See Exhibits E and F. I explained that documents are necessary in order to move forward with depositions, for that reason the United States indicated it would only agree to an extension under two conditions (1) that Nature's Way respond to the draft stipulation by no later than April 23, 2018, and (2) that Nature's Way produce all responsive documents no later than May 7, 2018. See Exhibit E.

8. On April 23, 2018, Ms. Castex responded that counsel for Nature's Way, Mr. Tillery, was in trial for two weeks, and while he reviewed the proposed stipulations and was comfortable with most of them, he still needed client approval. See Exhibit G. She also indicated the stipulations were incomplete. Id.
9. On April 23, 2018, I responded and indicated that the United States considered the discovery responses to be untimely if not received by the end of the day. See Exhibit H. I pointed out that despite having draft stipulations for two months, counsel for Nature's Way had not reviewed them with their client. Id. With only six weeks left in discovery, the United States could not provide additional time noting that Nature's Way had not met either of the conditions set out by the United States for an extension. Id. Additionally, I pointed out the draft stipulations were only incomplete to the extent that they left open information that only Nature's Way could provide. Id. In order to move forward, I removed the blanks and comments that were intended for Nature's Way to fill in, provided a new draft of the stipulations and indicated that the United States would be willing to withdraw discovery requests if the stipulations were signed by the following day. Id.
10. On April 23, 2018, Ms. Castex responded by once again asking for extension, noting that Nature's Way would produce documents by May 7th, and would get back to the United States on stipulations as soon as possible. See Exhibit I.
11. I responded on April 23, 2018, asking that counsel from Nature's Way contact counsel for the United States to discuss these issues over the telephone. See Exhibit J. I explained that given the limited time for discovery, the parties need to know

now, not later, what if any issues exist over the scope of discovery. Id. The response from Nature's Way regarding stipulations and discovery gave no indication of what issues exist and need to be resolved. Id. I requested that one of the lawyers representing Nature's Way call me on the telephone directly if Nature's Way wished to reach an agreement. Id. I noted there are least four counsel of record other than Mr. Tillery. Id.

12. On April 24, 2018 at 4:11 am, Mr. Tillery indicated by email that he would call either that evening or the next day. See Exhibit K.
13. I responded via email on April 24, 2018 at 6:38 am that I could be reached on my cell phone that evening, and I provided my cell phone number. See Exhibit L.
14. On April 24, 2018 at 5:31 pm, Mr. Tillery emailed again saying he had just finished for the day in trial and would not call until the next day at lunchtime.
15. Mr. Tillery never called on April 25, 2018.
16. On April 26, 2018, I contacted Mr. Tillery via email and Fed Ex to inform him that the United States considered Nature's Way's responses late. See Exhibit M.
17. As of May 3, 2018, the United States had not heard from Mr. Tillery or any of the counsel of record for Nature's Way.
18. On May 3, 2018, I emailed Mr. Tillery once again to inform him that the United States would be required to file a Motion to Compel if it did not receive full responses by Nature's Way by 5pm eastern time the following day, May 4, 2018. I asked Mr. Tillery to contact me directly by 12 pm eastern time on May 4, 2018 to let me know his position. I also provided a Good Faith Certificate for him to execute.

19. As of 5:00 Central time, May 4, 2018, I have received no response whatsoever to my email of May 3, 2018.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

This declaration was executed in San Francisco, CA on the 4th day of May, 2018.

/s/
ELISE S. FELDMAN
Senior Counsel
United States Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
301 Howard Street, Suite 1050
San Francisco, CA 94105
Tel: (415) 744-6470
Fax: (415) 744-6476
Email: Elise.Feldman@usdoj.gov

